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OAH 2-0900-17422-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HEALTH

In the Matter of the Administrative Penalty Order Issued to Causeway on Gull Association, Inc.

RECOMMENDATION FOR SUMMARY DISPOSITION

This matter comes before Administrative Law Judge Raymond R. Krause on the parties' cross-motions for summary disposition. The Department filed its Motion and supporting Memorandum with the Office of Administrative Hearings on January 25, 2007. Respondent filed its Motion and supporting Memorandum on January 26, 2007. The parties filed responsive briefs on February 16 and 20, 2007. On February 23, 2007, the parties requested an opportunity to be heard prior to issuance of the decision on the cross motions for summary disposition. A hearing was scheduled for March 29, 2007, at which time the OAH record in this matter closed.

Brian Dillon, Assistant Attorney General, NCL Tower, Suite 1200, 445 Minnesota Street, St. Paul, Minnesota 55101-2130, appeared on behalf of the Department of Health (the Department). Richard D. Hawke, Attorney at Law, 2345 Rice Street, Suite 165, St. Paul, Minnesota 55113, appeared on behalf of Causeway on Gull Association, Inc., the owners' association for the Causeway on Gull timeshare development located in the City of Lake Shore, Cass County, Minnesota.

Based upon all of the filings in this case and for the reasons set out in the accompanying Memorandum:

IT IS RECOMMENDED that the Commissioner of Health grant the Department's Motion for Summary Disposition.

Dated this 2nd day of April, 2007

s/Raymond R. Krause
RAYMOND R. KRAUSE
Chief Administrative Law Judge

Tape recorded-one tape

MEMORANDUM

UNDISPUTED FACTUAL BACKGROUND

Operation of Causeway on Gull

Causeway on Gull Association ("Causeway") is a timeshare development located in the City of Lake Shore, Cass County, Minnesota. Its original Declaration of Covenants, Conditions and Restrictions for Interval Ownership was filed in 1985.[1] Respondent Causeway on Gull Association, Inc. ("Association"), the owners' association, is a non-profit corporation created in 1985 for the purpose of managing Causeway.[2]

The Association's powers and duties include, among others:

> (a) The care, upkeep, repair, replacement and surveillance of the Project, including all improvements thereon;
> (b) The preparation, adoption and amendment of annual budgets, including reserve funds for working capital and for repairs, maintenance and replacement;
> (c) Determination, allocation, billing and collection of common expenses and regular assessments and special assessments for common expenses;
> (d) The procurement and payment for hazard and liability insurance . . . ;
> (e) The adoption, implementation and amendment of uniform Rules . . . governing conduct within the Unit, the use of the Common Elements, and the personal conduct of Owners and their tenants, guests and invitees . . . and the enforcement thereof;
> (f) The payment of all operating expenses;
> (g) The employment of all persons which the Association deems necessary or desirable in connection with the operation of the Project;
> (h) The maintenance of books and records . . . ;
> (i) The entering into of contracts for services or materials necessary to the management and maintenance of the Project;
> (j) The employment of attorneys and the prosecution of such legal action as it deems necessary on behalf of any or all of the owners . . . ;
> (k) The procurement of all utilities necessary to the Project;
> (l) The maintenance of dock facilities . . . ;
> (m) The leasing of Interval Weeks owned by the Association on such terms as deemed advisable by the Board of Directors;
> (n) The right to go upon and enter the Lots and any buildings or structures . . . . in the event of an emergency . . . .[3]

The Association owns one week in each unit for maintenance purposes.[4] The Association does not rent or advertise any residential property although it does rent out non-residential property which is part of Causeway's common property.[5] The Association contracts with a property manager to maintain and

manage Causeway on a day-to-day basis.[6] Since December 2004, the property manager has been Narveson Management Company, Inc.[7]

Property rights in Causeway are sold as "unit-weeks" to individuals. Each week in each unit is a separate parcel conveyed by deed to an individual and recorded with Cass County.[8] Each owner has the exclusive right to use his unit-week and to authorize others to use it. At the end of his week, however, owners must "vacate [the] Unit . . . and remove all of his personal effects from such Unit."[9] An owner who owns two or more consecutive weeks, "need not vacate the Unit during the Service Period occurring between such consecutively owned Interval Weeks."[10]

Units are sometimes occupied by people other than the timeshare owners. An owner may choose to rent her week to someone with whom she has a direct connection. If she chooses, the owner may also ask the Association to facilitate a public rental. At such times, an "Owner Rental Form" is generated and placed into a binder.[11] The form specifies the rental amount requested (including a suggested "going rate") and information about what the owner wishes to do if the unit is not rented by a date she specifies on the form (e.g. use the unit herself, bank the space, etc.).[12]

When a person calls to inquire about the availability of such a rental, the Association "accepts phone calls . . . without screening the callers as to their connection with Causeway on Gull or otherwise determining who is calling to make said inquiry."[13] In addition to this "rental program" facilitated by the Association, some owners choose to advertise available unit-weeks on public websites advertising, among other things, vacation and timeshare rentals.[14] During 2005, the Association rented various members' units to the general public for at least 118 nights through its rental program.[15]

Other ways in which units are made available to non-owner guests are through a timeshare exchange company, through the original developer of Causeway or internally through the Association and its management company.[16] Some owners work with timeshare exchange companies to facilitate exchanging their unit-weeks with other timeshare opportunities, either at Causeway or at some other resort. The exchange companies then have the opportunity to provide the exchanged unit-week to some other person who may or may not have a relationship with Causeway.[17] At least 743 reservations at Causeway were made through timeshare exchange companies in 2005 and at least 881 such reservations were made during the first ten months of 2006.[18] The Association is unable to state with certainty which of these reservations were made by or on behalf of members of the Association, stating that "[t]he maker of the reservation is under no obligation to disclose the status or relationship of the individual guest as the reservation is made."[19]

The developer of the property has made units available for promotional purposes to owners or potential owners. In addition, staff members of the Association's management company are permitted to use unit-weeks provided they reimburse the Association for out-of-pocket housekeeping expenses.[20]

Licensure Dispute

Minnesota law charges the Commissioner of Health ("Commissioner") with establishing and enforcing the public health and safety standards that all lodging licensees must satisfy under state law.[21] The Commissioner may delegate all or part of such licensing authority to a city or county board of health.[22] Before 2004, the Department had such a delegation agreement with Cass County, pursuant to which Cass County licensed and regulated all lodging licensees within the county.[23] After terminating the delegation agreement with Cass County in 2003, the Department issued 2004 lodging license renewal notices to all hotels, motels, lodging establishments and resorts that were licensed by Cass County in 2003, including Causeway.[24]

Until 2004, the property manager for Causeway was the original developer of the property.[25] For several years before 2004 Causeway's former property manager did obtain a lodging license from Cass County.[26] In 2004, however, the Association determined that Causeway was not governed by the requirements of Minn. Stat. § 157.16, subd. 1 and declined to renew its license beginning in 2004.[27]

In February or March 2004, the Department notified Causeway that it had not received its license application. In a letter dated April 13, 2004, Richard Hawke, attorney for the Association, responded to the Department. Mr. Hawke stated that it was the Association's position that licensure was not required because the "situation is clearly outside the purview of the statute."[28]

In a letter dated October 26, 2004, the Department notified Causeway that, based on its failure to obtain a lodging license, it was in violation of Minn. Stat. § 157.16, subd. 1, and ordered Causeway to "discontinue the renting of your facilities immediately and take all necessary steps to obtain an appropriate license."[29]

In a letter dated November 3, 2004, Mr. Hawke replied that "Causeway on Gull is not governed by Minnesota Statute Section 157.16, subdivision 1, nor does it have any units for rent."[30] On December 10, 2004, the Department issued an administrative penalty order (APO) for failure to comply with Minn. Stat. § 157.16, subd. 1. Correspondence between the Department and Mr. Hawke on behalf of the Association continued during 2005 and 2006, but the licensing issue remained unresolved.[31]

The Department contends that the Association must obtain a license pursuant to Minn. Stat. § 157.16, subd. 1 for the years 2004, 2005, 2006 and now 2007 and that it must pay the $94 nonforgivable penalty from the original APO.[32] The Association argues that its operation of Causeway falls outside the scope of the license provisions and that therefore it need not obtain a license or pay the penalty.

Legal Standard for Summary Disposition

Summary disposition is the administrative equivalent to summary judgment.[33] Summary judgment is appropriate when there is no genuine issue of material fact and a party is entitled to judgment as a matter of law.[34] A genuine issue is one that is not a sham or frivolous, and a material fact is one which will affect the outcome of the case. The Office of Administrative Hearings has generally followed the summary judgment standards developed in judicial courts in considering motions for summary disposition regarding contested case matters.[35]

The moving party must demonstrate that no genuine issues of material fact exist.[36] If the moving party is successful, the nonmoving party then has the burden of proof to show specific facts are in dispute that can affect the outcome of the case.[37] It is not sufficient for the nonmoving party to rest on mere averments or denials; it must present specific facts demonstrating a genuine issue for trial.[38] When considering a motion for summary judgment, the Judge must view the facts in the light most favorable to the non-moving party.[39] All doubts and factual inferences must be resolved against the moving party.[40] If reasonable minds could differ as to the import of the evidence, judgment as a matter of law should not be granted.[41]

LEGAL ANALYSIS

Application of Statutory Definition

Minnesota statutes section 157.16, subd.1 requires an annual license "for every person, firm, or corporation engaged in the business of conducting a . . . hotel, motel, lodging establishment, or resort." Whether Causeway on Gull requires a license under section 157.16, subd.1 depends on whether the Association is "engaged in the business of conducting [Causeway as] a . . . hotel, motel, lodging establishment, or resort."

The statute defines "resort" as

> [A] building, structure, enclosure, or any part thereof located on, or on property neighboring, any lake, stream, skiing or hunting area, or any recreational area for purposes of providing convenient access thereto, kept, used, maintained, or advertised as, or held out to the public to be a place where sleeping accommodations are furnished to the public, and primarily to those seeking recreation for periods of one day, one week, or longer, and having for rent five or more cottages, rooms, or enclosures.[42]

The statute goes on to define "hotel or motel" as

> "Hotel or motel means a building, structure, enclosure or any part thereof used as, maintained as, advertised as, or held out to be a place where sleeping accommodations are furnished to the public and furnishing accommodations for periods of less than one week." [43]

There is no dispute that Causeway on Gull includes structures which are "located on, or on property neighboring, a lake . . . for purposes of providing convenient access thereto."

The initial question before this ALJ is whether Causeway on Gull is "kept, used, maintained, or advertised as, or held out to the public to be a place where sleeping accommodations are furnished to the public . . . ."[44] Respondent Association argues that, because it does not own the individual unit-weeks which are rented to the public, and because it does not advertise for their rental, the language of section 157.15, subd. 11 does not apply. The Association's reliance on ownership and advertising as determinative factors is misguided and unpersuasive.[45]

The question is not whether the Association owns the unit-weeks or advertises their availability. The question is whether the Association engages in any of the activities spelled out in the statute. The Association's own evidence shows that it maintains all of the property at Causeway on Gull, including the units that are rented to the public. It is required to do so by the terms of its own Declaration of Covenants, Conditions, and Restrictions for Interval Ownership of Causeway on Gull.

Furthermore, while the Association may not advertise the availability of units for rent, Causeway is "held out to the public to be a place where sleeping accommodations are furnished to the public . . . ." Through the management company it employs, the Association maintains a notebook of information about units available for rent and serves as the central clearinghouse for all reservations, whether by owners, timeshare exchange companies or people who are complete strangers to the development. The Association has no policy of insuring that only people who are owners or even friends or acquaintances of owners make reservations to stay at Causeway. On the contrary, the Association states that staff make no inquiries about what, if any, connection a person who is making a reservation might have to owners of unit-weeks at Causeway. Other than requiring that all guests conform to the same standards of behavior required of unit-week owners, the Association places no limits on who can stay at the development.

In addition, although the Association does not place the advertising, it is clear that unit-week rentals at Causeway are advertised to the public on several different, publicly-accessible websites. However a member of the public might come to hear about the possibility of renting a week at Causeway, it seems certain that a stranger to the Causeway community calling about a possible rental will not be excluded simply because she lacks some connection to the Association.

The Association looks to Black's Law Dictionary definition of "public" to argue that it somehow is not open to the public.[46] But in using this legal definition, which includes language stating that a "public place" is "a place to

which the general public has a right to resort" the Association goes too far in its attempt to distinguish Causeway from a hotel or resort. Resorts are not required to admit the general public without restriction. Specific resorts cater to specific populations. Some do not allow families with young children. Others are specifically for single individuals. People with bad credit histories might be excluded from some resorts. Some resorts require a credit card to make reservations. Most resorts exclude people who are not paying guests. The Association presented no evidence to show that it is more restrictive in excluding people from renting its units any more than other vacation developments.

As part of its argument that it is not open to the public, the Association points out that many of its common facilities are locked off, and that access to such facilities "by non-registered owners/guests" is restricted.[47] This argument fails to distinguish the practices at Causeway from those at most other resorts. There is nothing unusual about a resort restricting access to amenities to registered guests. That does not mean that the resort is not "held out to the public" as a place to come for vacation.

In addition, the system which the Association has developed for facilitating rentals is not theoretical. According to the Association's own records, 179 nights were rented during 2005. While this may be a small percentage of the total available nights, it is a significant number if one considers the purpose of the Department's licensing rules.[48] Nor does the statute create a cutoff in terms of either percentage of nights used by the public, or absolute numbers. The argument that 179 nights is somehow insignificant because it is a small percentage of the total number of nights available at Causeway is not persuasive.

Transient versus Residential Use

The Association argues that its own governing document states that the units are to be used solely for "residential purposes, and as permitted by the Constituent Documents."[49] While this is true, the Association's Declarations expressly permit owners to rent their unit-weeks. Similarly, the Association clearly has the authority, expressly stated in the Declarations, to lease "Interval Weeks owned by the Association on such terms as deemed advisable by the Board of Directors." While the Association does not currently engage in the practice of leasing any Interval Weeks it may own, it is not prohibited from doing so.

In arguing that Causeway is not a "resort" as defined by Minn. Stat. § 157.15, subd. 11, the Association relies on *Asseltyne v. Fay Hotel.*[50] In this case, the Minnesota court considered whether a woman who was renting a room in a hotel on a monthly basis was a lodger or a transient guest for purposes of determining the hotel owner's liability for destruction of the guest's belongings as a result of a fire in the hotel. In determining that Ms. Asseltyne was a lodger, the court focused on the fact that she was a resident of the town in which the hotel was located (e.g., she was employed in the town, registered to vote in the town,

etc.) and that she had no other residence in the town.[51] Neither Causeway's owners nor its non-owner guests are lodgers in the sense that the court found Asseltyne was a lodger. In fact, were they lodgers in that sense, Causeway would arguably be subject to licensing pursuant to Minn. Stat. § 157.15, subd. 8.

The Association focuses on language in *Asseltyne* which states "the court drew a distinction between lodging houses and hotels, saying that the proprietor of a private lodging house is not bound to receive all who apply, but may select his guests and contract specially with each, while a hotel keeper must receive all who come in a situation in which they are fit to be received."[52] The problem with this argument is twofold. First, again, the court here is distinguishing not between a place that is subject to licensing because it is "held out to the public" as offering accommodations and one that does not. It is distinguishing between two such places – one is a lodging facility, the other is a hotel. Second, Causeway does not "select [its] guests and contract specially with each." As discussed above, Causeway rents its units to members of the public who call without regard to their relationship to the Association or its member owners.

Analogous Arguments

The Association argues that several different statutes, ordinances and cases from various jurisdictions should be used to determine that it does not fall within the scope of the health licensing statute. First, it points out that the Minnesota Common Interest Ownership Act, Chapter 515B, which governs timeshare associations, defines the term "residential use" as "use as a dwelling, whether primary, secondary or seasonal, but not transient use such as hotels or motels."[53] In discussing this statute, the Association misstates the meaning of the statute, saying "the Legislature itself has said that residential timeshare units are not hotels, motels or transient use facilities." [54] In fact, the statute is defining a type of use, stating that "residential use" is "not transient use."

Next, the Association contends that, because the City of Lake Shore has determined that timeshare developments are more like residential property than resort property for tax purposes, the Department should look at them in the same way.[55] While no explanation of the City's reasoning behind this decision is provided, a city's analysis of the property when making tax decisions would likely be very different than the legislature's analysis of whether a vacation development that rents its units on a regular and ongoing basis should be licensed and inspected by the Department of Health. Consequently, this argument is not dispositive or even persuasive.

The third authority on which the Association relies is *Ambassador Athletic Club v. Utah State Tax Commission*, 27 Utah 2d 377, 496 P.2d 883 (1972), in which the Utah court determined that a private non-profit athletic club which rented rooms only to its members, their guests and to members of clubs in other cities with which it had reciprocal agreements, was not a hotel for tax

purposes.[56] The Utah court held that, because the club was not open to the public as a whole, it was not a hotel for tax purposes.[57]

The Association's reliance on this case is not persuasive for several reasons. First, unlike the athletic club, Causeway is open to the general public. A person need not be a member of the Association in order to stay at Causeway. When units are available, the Association and owners are happy to rent them to anyone from the general public who can pay the rent. Callers making inquiries about available units are not asked whether they are members, or guests or friends of members. They are specifically not asked to identify their relationship to Causeway.[58] This is very different from the situation in the Utah case. In addition, the Utah case is a tax case. The court in *Ambassador* does not discuss the tax policy behind its decision. The public health and safety concerns underlying the legislature's determination that resorts that are open to the public should be licensed by the Department are different concerns. The Utah case is, therefore, not instructive.

Whether Association is "Engaged in the Business"

Finally, the Association contends that Minn. Stat. § 157.16, subd. 1 does not apply to it because it does not "engage in the business of conducting a . . .hotel, motel, lodging establishment or resort." First, the Association focuses on the frequency with which it rents out units, saying that "occasional rental would not put one in the business of being a resort."[59] Renting units at the rate of 100-179 per year is certainly more than "occasional." Nor does the statute set a minimum number of times per year which a person or corporation would have to rent its units in order to be "conducting a . . . resort." The plain language of the statute simply does not allow for such an exception.[60]

Second, the Association argues that it is not in "business" because it is not operating for profit. As the Association's powers and duties of the Association laid out in its Declarations make clear, the Association is absolutely in the business of conducting the operations of Causeway. It is responsible for all of the aspects of the business in which one would expect an entity to be engaged in these circumstances, from purchasing insurance to hiring appropriate staff to handling the daily chores such as maintaining the property and taking reservations from callers. Association's reliance on the statutory definition of a "small business" as an entity which is "organized for profit" is entirely misplaced.[61] Minn. Stat. § 157.16, subd. 1 does not require that a licensee be engaged in a "for-profit business" or a "small business." The statute simply requires that the licensee be "engaged in the business of conducting a . . . resort." That is what the Association does and it is why it is subject to licensure by the Department.

Based on the foregoing application of the law to the undisputed facts in this case, this Administrative Law Judge finds that Causeway on Gull is subject

to licensure pursuant to Minn. Stat. § 157.15, subd.1. Therefore, the Department's motion for summary disposition is granted, and the Respondent Association's cross-motion for summary disposition is denied.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Health will make the final decision after a review of the record. The Commissioner may adopt, reject, or modify the Recommendation for Summary Disposition. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Dianne Mandernach, Commissioner, PO Box 64975, St. Paul, MN 55164-0975, to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat.§ 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

R.R.K.

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[1] Respondent's Memorandum (R. Mem.), pg. 1
[2] R. Mem., p. 2; Aff. Of Richard Hawke (Hawke Aff.), Ex. B and C
[3] Hawke Aff., Ex. A, para. 4.1
[4] R. Mem., p. 2
[5] R. Mem., p.2
[6] R. Mem. p. 2
[7] Respondent's response to Department's First Set of Interrogatories, response no. 5
[8] R. Mem., p. 2
[9] Hawke Aff., Ex. A, para. 2.5
[10] Id.
[11] Respondent's response to Department's First Set of Interrogatories, response no. 6
[12] Id., Ex. D and E
[13] R. Mem., p. 4
[14] Department's Memorandum (D. Mem.), Affidavit of Brian Dillon (Dillon Aff.), para. 4 and Attachment 3

[15] The parties' statements about this are somewhat inconsistent. The Association, through the affidavit of its current president, states that it "is aware of a total of 179 days rented out . . . that were rented through its "rental program" in 2005." R. Mem., Aff. of Dennis Steele (Steele Aff.), para. 9. The Department states that "at least 79 reservations at Causeway were made by members of the general public through the Association during" part of 2005 and during the first ten months of 2006. Department's Memorandum (D. Mem.), p. 10 and Affidavit of Brian Dillon (Dillon Aff.), para. 8. The figure of 118 rental nights during 2005 reflects the "departed guest list" provided by the Association for that year and includes only guests whose stay was coded REN.
[16] Respondent's response to Department's First Set of Interrogatories, response no. 4
[17] Id. at response no. 4
[18] Dillon Aff., paras. 5 and 6
[19] Respondent's response to Department's First Set of Interrogatories, response no. 4. The 118-night "rental program" figure stated in the preceding paragraph does not include any nights which were reserved through time share companies, which comprise the majority of the reservations. Of these, it is not possible to determine which were timeshare rentals or trades, or which were Causeway owners going through their timeshare companies to reserve their own weeks. The Operations Manager for the Association's current property manager estimates that as many as 80% of people making reservations through two of the timeshare companies and 50% of people making reservations through a third timeshare company are Causeway owners. Affidavit of Leanne Rundhaug (Rundhaug Aff.), paras. 5 and 6. In 2005, assuming 743 reservations made through timeshare companies and using the 80% figure for all three companies, this still amounts to another 148 reservations (multiplied by an unknown number of nights) by people who are not Causeway owners.
[20] Id.
[21] *See* Minn. Stat. § 157.011, subd. 1 (2006); Minn. R. Ch. 4625 (2005)
[22] *See* Minn. Stat. § 145A.04 (2006)
[23] D. Mem., Affidavit of Colleen Paulus, para. 5
[24] Id. para. 8
[25] Respondent's response to Department's First Set of Interrogatories, response no. 5
[26] Paulus Aff., para. 6 and Ex. A
[27] R. Mem., p. 10
[28] Paulus Aff., Ex. F
[29] Id., Ex. E
[30] Id., Ex. F
[31] Paulus Aff., 13-20 and Exhibits G-M. During the same time period, there was correspondence and communication between the Department and Mr. Hawke and others regarding a dispute about the licensing and inspection of certain pools and spas at Causeway. The disputes regarding the pools and spas have been resolved and are not at issue in these cross-motions for summary disposition.
[32] Department's August 1, 2006 Notice and Ordering for Prehearing Conference, para. 9
[33] Minn. R. 1400.5500 K
[34] Minn. R. Civ. P. 56.03
[35] Minn. R. 1400.6600
[36] *Theile v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988)
[37] *Highland Chateau v. Minn. Dept. of Public Welfare*, 356 N.W.2d 804, 808 (Minn. App. 1984)
[38] Minn. R. Civ. P. 56.05
[39] *Ostendorf v. Kenyon*, 347 N.W.2d 834 (Minn. App. 1984)
[40] *Theile v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988)
[41] *Anderson v. Liberty Lobby Inc.*, 477 U.S. 242, 250-51 (1986)
[42] Minn. Stat. §157.15, subd.11 (2006)
[43] Minn. Stat. § 157.15, subd. 7
[44] The Department looks to the definitions of "resort" and "hotel or motel" in asserting its licensing authority. The arguments made by both parties focus on language that is applicable to both licensing sections and there is nothing in the definition of "hotel or motel" that is not applicable to Causeway, except that some guests do stay for a week or longer. Because the "resort" definition applies in all cases, that is the basis on which this recommendation rests.

[45] The Association also argues that it is not "lodging establishment" as defined as Minn. Stat. § 157.15, subd. 8. R. Mem., p. 8. It is not necessary, however, to reach that question as the Administrative Law Judge finds that Causeway is a "resort" under section 157.15, subd. 11 and thus falls within the jurisdiction of the Department's licensing authority.
[46] R. Mem., p. 12
[47] R. Mem., p. 12
[48] The rules which govern the Department's licensing pursuant to Minn. Stat. § 157.16, subd. 1 are found at Minnesota Rules pt. 4625. These rules cover topics including, but not limited to sanitation requirements (Minn. R. 4625.0300), building requirements (4625.0400), floor requirements (4625.0500), wall and ceiling requirements (4625.0600), screening requirements (4625.0700), lighting and ventilation requirements (4625.0800), insect and rodent control (4625.1700) and cleanliness of premises (4625.1900). These are precisely the kind of rules one would expect to apply to a vacation development where non-owners, who have no financial interest in or control over the operation or maintenance of the development, pay for sleeping and vacation accommodations approximately 179 times in a given year.
[49] R. Mem., p. 7
[50] 222 Minn. 91, 23 N.W. 2d 357 (Minn. 1946). R. Mem., p.13
[51] *Id.* 222 Minn. at 99, 23 N.W.2d at 362
[52] *Id.* 22 Minn. at 98, 23 N.W.2d at 361-362
[53] Minn. Stat. § 515B.1-13(29) (2006)
[54] R. Mem., p. 8
[55] R. Mem., pp. 7-8
[56] R. Mem., pp. 9-10
[57] *Ambassador* at 27 Utah 378, 496 P.2d 883-884
[58] R. Mem., p. 4
[59] R. Mem., p. 14
[60] In *Yeh v. County of Cass, et. al.,* 696 N.W. 2d 115 (Minn. App. 2005), *rev. denied* 2005 Minn. LEXIS 512 (Minn. Aug. 16, 2005), the Minnesota Court of Appeals found that a residential development which had 3 units available for rent was not a resort within the meaning of the Cass County Shoreland Ordinance. *Id.* at 128-129. But again, this was not for purposes of applying the Health Department licensing requirements. Nor does the court say where it would draw the line to determine when a development including vacation rentals becomes a resort.
[61] R. Mem., p. 14.